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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**

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10 JOHN CLERKIN and others,

11 Plaintiffs,

12 v.

13 MYLIFE.COM INC.,

14 Defendant.
15

Case No. 11-CV-00527 CW (NC)

**ORDER RESOLVING
DISCOVERY DISPUTE ABOUT
FORMAT FOR DOCUMENTS
PRODUCED BY MYLIFE**

Re: Dkt. No. 147

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17 This discovery dispute exemplifies the adage that litigants should be careful what
18 they wish for; their wish may come true.

19 More than six months ago, this Court granted Plaintiffs' motion to compel and
20 ordered MyLife to produce documents requested by Plaintiffs. MyLife complied,
21 producing more than 4.6 million pages of documents to Plaintiffs in a rolling production.
22 At the request of Plaintiffs, MyLife produced the documents in "PDF" format. Portable
23 Document Format (PDF) is a commonly used file format used to represent documents in
24 a manner independent of application software, hardware, and operating system.¹ Free
25 publicly available software, such as Adobe Reader, permits users to view documents
26 produced in PDF.

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28 ¹ *Portable Document Format*, Wikipedia (October 3, 2012, 9:41 a.m.),
http://en.wikipedia.org/wiki/Portable_Document_Format.

1 Plaintiffs were able to view the documents produced by MyLife. Their present
2 complaint is that in the format the documents were produced, it is difficult for their
3 attorneys to search and organize the documents using their available digital tools.

4 In hindsight, Plaintiffs wish they had specified that the documents be produced in
5 a *searchable* format, such as “searchable” PDF, TIFF, or in their native format. Doc.
6 No. 147 at 4. In hindsight, if Plaintiffs had asked for the documents to be produced in a
7 *searchable* PDF format, they now would be able to search through the documents much
8 more easily.

9 Technology provides a possible solution. As suggested by Plaintiffs, the
10 documents produced could be converted into a more searchable format if one were to
11 “OCR” the documents. OCR, meaning optical character recognition, is the mechanical
12 or electronic conversion of scanned images of handwritten, typewritten or printed text
13 into machine-encoded text.² If the MyLife documents were converted into searchable
14 machine-encoded text, then Plaintiffs could both search and view the documents
15 electronically. The parties agree that the cost to OCR the MyLife document production
16 is approximately \$12,000.

17 The question presented is whether MyLife should be compelled to reproduce its
18 4.6 million page document production in a *searchable* format. In the alternative,
19 Plaintiffs assert that MyLife should pay for the cost to OCR the documents already
20 produced.

21 Federal Rule of Civil Procedure 34(b)(2)(E)(ii) provides that if a document
22 request “does not specify a form for producing electronically stored information,” then
23 the producing party must produce it in a “form or forms in which it is ordinarily
24 maintained or in a reasonably usable form or forms.” In this case, however, plaintiffs *did*
25 specify a format for producing electronically stored information, and MyLife produced
26 documents in precisely the format requested by Plaintiffs. In hindsight, Plaintiffs could

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28 ² *Optical Character Recognition*, Wikipedia (September 27, 2012, 2:34 p.m.),
http://en.wikipedia.org/wiki/Optical_character_recognition.

1 have asked for a searchable format before MyLife began its production. At the very
2 least, Plaintiffs should have recognized as soon as they began their document review that
3 they should have specified a searchable format. Plaintiffs charge that MyLife has
4 engaged in “discovery abuse” by producing documents in precisely the format requested
5 by Plaintiffs. Dkt. No. 147 at 3.³ The Court disagrees, and suggests that Plaintiffs
6 should be more careful in what they request in the future.

7 In sum, because the Court concludes that the format of MyLife’s document
8 production complied with the format requested by Plaintiffs, MyLife satisfied Rule 34.
9 The Court therefore denies Plaintiffs’ request to compel MyLife to reproduce its
10 production. The Court also denies Plaintiffs’ request for MyLife to pay for the cost to
11 OCR the documents already produced.⁴

12 The parties must meet and confer with each other about the format of any
13 documents to be produced in the future. Any party may object to this order within
14 fourteen days under Federal Rule of Civil Procedure 72.

15 IT IS SO ORDERED.

16 DATED: October 4, 2012



NATHANAEL M. COUSINS
United States Magistrate Judge

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25 ³ Plaintiffs also complain that the 4.6 million page production includes documents
26 they do not think are relevant. Plaintiffs do not specify how many documents fall into
27 this category; nor do they explain how they have been prejudiced.

28 ⁴ The Court acknowledges that MyLife proposed a compromise to resolve this
discovery dispute: the parties split the \$12,000 cost of OCR. Dkt. No. 147 at 6:21-22.
Plaintiffs did not accept.